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In re Application of
Reistroffer
Application No.: 10/597,346
PCT No.: PCT/US2005/003302
Int. Filing Date: 01 February 2005
Priority Date: 06 February 2004
Attorney Docket No.: REI06-0001
For: Linear Incendiary Strand And Method
For Prescribed Fire Ignition

DECISION

This is with regard to the "Petition To Revive" filed on 12 September 2008, which is being treated under 37 CFR 1.181 and 37 CFR 1.137(b).

BACKGROUND

This international application was filed on 01 February 2005, designated the United States, and claimed an earliest priority date of 06 February 2004. Accordingly, the 30 month time period for paying the basic national fee in the United States expired at midnight on 06 August 2006. Applicant timely filed *inter alia* the basic national fee on 20 July 2006.

On 04 December 2007, a filing receipt was mailed to applicant, showing a "Filing or 371(c) Date" of "07/20/2006." Also mailed was a Notification of Insufficient Fees (Form PCT/DO/EO/923) requiring the payment of \$150.00 in additional claims fees.

On 28 August 2008, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to counsel, indicating that this international application had become abandoned with respect to the national stage in the United States for failure to timely reply to the "notification of Missing Requirements (Form PCT/DO/EO/905), mailed 12/04/2007 within the time period set therein."

DISCUSSION

Petition Under 37 CFR 1.181

Petitioner asserts that "we never received the Notification of Insufficient Fees dated December 4, 2007," and requests a refund of the \$770.00 petition fee under 37 CFR 1.137(b) on this basis. This assertion and request are, in effect, equivalent to a petition for withdrawal of the holding of abandonment on the basis of non-receipt of the Office correspondence in question. As explained in MPEP 711.03(c), and following *Delgar v. Schuyler*, 172 USPQ 513 (D.D.C. 1971), an adequate showing of non-receipt of papers mailed to applicant by the Office must include (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket records must also be referenced in petitioner's statement).

Petitioner states that "I never received the Notification of Insufficient Fees." This statement satisfies requirement (1).

Petitioner does not explicitly state that a search of the file jacket and docket records indicates that the Notification was not received. Therefore, requirement (2) has not been satisfied.

Petitioner has not provided a copy of relevant docket records; therefore, requirement (3) has not been satisfied.

Since petitioner has not adequately demonstrated non-receipt of the Notification of Insufficient Fees mailed on 04 December 2007, it would not be appropriate to withdraw the holding of abandonment on the basis of non-receipt, or to refund the petition fee under 37 CFR 1.137(b), at this time

Petition Under 37 CFR 1.137(b)

Petitioner states that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional." Said statement is being accepted in satisfaction of 37 CFR 1.137(b)(3).

A review of the application file reveals that applicant has filed the required reply in the form of the required \$150.00 in additional claims fees, and has paid the petition fee. Therefore, the request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the national stage in the United States of America.

It is noted that the Filing Receipt mailed on 04 December 2007 showed a "Filing or 371(c) Date" of "07/20/2006. However, no oath or declaration was filed in this national stage application until 23 August 2006. Therefore, the Filing Receipt mailed on 04 December 2007 was issued in error, and it is hereby **VACATED**.

Though the declaration filed on 23 August 2006 is suitable for purposes of compliance with 37 CFR 1.497(a) and (b), applicant has not paid the surcharge under 37 CFR 1.492(h), and no fee authorization appears to be present in the application file. Therefore, a Notification of Missing Requirements requiring payment of the surcharge is being issued.

DECISION

The petition under 37 CFR 1.181 is **DISMISSED**, without prejudice. Any request for reconsideration must be filed within **TWO (2) MONTHS** from the mailing date of this Decision, extendable under 37 CFR 1.136(a).

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application is being returned to the Office of Patent Application Processing for the preparation and mailing of a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring payment of the surcharge under 37 CFR 1.492(h).

/George Dombroske/
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